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SAFE TRANSPORTATION OF FOOD ACT OF 1989

DECEMBER 1, 1989.—Ordered to be printed

Mr. ANDERSON, from the Committee on Public Works and Transportation, submitted the following

REPORT

[To accompany H.R. 3386]

[Including cost estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 3386) to prohibit the use of refrigerated motor vehicles for the transportation of solid waste, to prohibit the use of cargo tanks in providing motor vehicle transportation of food and hazardous materials, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Safe Transportation of Food Act of 1989".

SEC. 2. FINDINGS.

Congress finds that—

(1) Americans are entitled to receive food and other consumer products that are not made unsafe as a result of certain transportation practices;

(2) the American public is threatened by the backhauling of products potentially harmful to consumers in motor vehicles and cargo tanks which are used to transport food and other consumer products; and

(3) the risks posed to consumers by such backhauling practices are unnecessary, and such practices must be terminated.

SEC. 3. REFRIGERATED MOTOR VEHICLES.

(a) PROHIBITION.—No person shall use, or arrange for the use of, a refrigerated motor vehicle to provide transportation of food if such vehicle has been used to transport solid waste (other than a category or type of solid waste which is included on a list published under subsection (b)).

(b) LIST OF ACCEPTABLE SOLID WASTE.—

(1) PUBLICATION.—The Secretary shall publish in the Federal Register a list of categories or types of solid waste which the Secretary has determined do not

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make food unsafe as a result of transportation in a refrigerated motor vehicle which is used to transport food.

(2) FOOD PACKAGING.—The list shall include, at a minimum, cardboard and food packaging except to the extent that the Secretary determines that the transportation of cardboard or food packaging in a refrigerated motor vehicle which is used to transport food would make the food unsafe.

(3) AMENDMENTS.—The Secretary may periodically amend the list by publication in the Federal Register.

SEC. 4. CARGO TANKS.

(a) PROHIBITION.—No person shall use, or arrange for the use of, a cargo tank to provide motor vehicle transportation of food if such tank has been used to transport a nonfood product (other than any nonfood product which is included on a list published under subsection (b)).

(b) LIST OF ACCEPTABLE NONFOOD PRODUCTS.—The Secretary shall publish in the Federal Register a list of nonfood products which the Secretary has determined do not make food unsafe as a result of transportation in a cargo tank which is used to transport food. The Secretary may periodically amend such list by publication in the Federal Register.

(c) IDENTIFICATION.—After the 365th day following the date of the enactment of this Act—

(1) no person shall use, or arrange for the use of, a cargo tank to provide motor vehicle transportation unless such tank is identified, by a permanent marking on such cargo tank, as transporting only nonfood products or as transporting only food products and nonfood products which are included on a list published under subsection (b);

(2) no person shall use, or arrange for the use of, a cargo tank to provide motor vehicle transportation of food if such cargo tank is identified pursuant to paragraph (1) as a cargo tank transporting only nonfood products; and

(3) no person shall use, or arrange for the use of, a cargo tank to provide motor vehicle transportation of a nonfood product which is not included on a list published under subsection (b) if such cargo tank is identified pursuant to paragraph (1) as a cargo tank transporting only food and nonfood products included on such a list; and

(4) no person shall receive any food or nonfood product which has been transported in a cargo tank in violation of paragraph (2) or (3).

SEC. 5. TRANSPORTATION OF ASBESTOS AND INFECTIOUS WASTE.

No person shall use, or arrange for the use of, a motor vehicle to provide transportation of asbestos or any infectious waste except in a motor vehicle which is used only to provide transportation of asbestos, infectious wastes, and any other products which the Secretary determines are appropriate to be transported in a motor vehicle which transports asbestos or infectious waste or both. The Secretary shall publish in the Federal Register a list of such products. The Secretary may periodically amend such list by publication in the Federal Register.

SEC. 6. WAIVER AUTHORITY.

After notice and an opportunity for comment, the Secretary may waive, in whole or in part, application of any provision of this Act or any regulation issued under this Act with respect to any class of persons, class of motor vehicles, or class of food if the Secretary determines that such waiver is not contrary to the public interest. Any waiver under this section shall be published in the Federal Register, together with reasons for such waiver.

SEC. 7. REGULATIONS.

(a) ISSUANCE.—Not later than 150 days after the date of the enactment of this Act, the Secretary shall issue such regulations as may be necessary to carry out the objectives of sections 3, 4, 5, and 6. Such regulations shall include requirements relating to marking of cargo tanks, disclosure of products transported, and cleaning of cargo tanks and, where appropriate, other vehicles. Such regulations may include requirements relating to marking of motor vehicles, recordkeeping, monitoring of compliance, and waivers under section 6. For purposes of carrying out the objectives of this Act, such regulations shall establish methods, operations, and procedures which may be used in cleaning cargo tanks between shipments.

(b) RULEMAKING PROCEEDING.—Not later than 30 days after the date of the enactment of this Act, the Secretary shall initiate a rulemaking proceeding to issue regulations pursuant to subsection (a).

SEC. 8. ADDITIONAL MEASURES.

(a) STUDY—

(1) DESCRIPTION.—The Secretary shall conduct a study to determine—

(A) those measures, in addition to the prohibitions of sections 3 and 4, which are necessary to assure that food transported in refrigerated motor vehicles and cargo tanks is not made unsafe as a result of such transportation, and

(B) those measures with respect to the transportation of food or other consumer products, or of solid waste or other nonfood products, or of both by motor vehicles (in addition to refrigerated motor vehicles and cargo tanks) which are necessary to assure that such food or consumer products are not made unsafe as a result of such transportation.

(2) CONSIDERATION OF EXISTING PACKAGE PERFORMANCE STANDARDS.—In conducting the study under this subsection, the Secretary shall consider the effectiveness of any existing regulations governing package performance standards.

(3) REPORT—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the results of the study conducted under this subsection.

(b) REGULATIONS.—

(1) ISSUANCE.—The Secretary, on the basis of the results of the study conducted under this section, may issue such regulations with respect to the transportation of food or other consumer products, or of solid waste or other materials, or of both motor vehicles as the Secretary determines are necessary to assure that such food or consumer products are not made unsafe as a result of such transportation.

(2) ADEQUATE EXISTING PACKAGE PERFORMANCE STANDARDS.—In any case in which the Secretary determines that existing regulations governing package performance standards are adequate to ensure the safe transportation of food, the regulations to be issued under this subsection shall not apply.

(3) TRANSMITTAL TO CONGRESS.—The Secretary shall transmit to Congress the regulations issued pursuant to this subsection.

(4) LIMITATION.—The regulations issued pursuant to this subsection shall not take effect before the 90th day following the date of their transmittal to Congress.

SEC. 9. POWERS AND DUTIES OF THE SECRETARY.

The Secretary shall have the same powers, duties, and authorities under this Act with respect to transportation regulated under this Act as the Secretary has under section 109 (other than subsections (c)(1), (d), and (e)) of the Hazardous Materials Transportation Act with respect to transportation regulated under such Act.

SEC. 10. PENALTIES.

(a) CIVIL.—

(1) IMPOSITION.—Any person (except an employee who acts without knowledge) who is determined by the Secretary, after notice and an opportunity for a hearing, to have knowingly committed an act which is a violation of a provision of this Act or an order or regulation issued under this Act shall be liable to the United States for a civil penalty of not more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense.

(2) ASSESSMENT.—The amount of civil penalty under this subsection shall be assessed by the Secretary by written notice.

(3) DETERMINATION OF AMOUNT.—In determining the amount of a civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

(4) RECOVERY AND COMPROMISE.—A civil penalty under this subsection may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States. Prior to referral to the Attorney General, such civil penalty may be compromised by the Secretary.

(5) SET-OFF.—The amount of a civil penalty under this subsection, when finally determined (or agreed upon in compromise), may be deducted from any sums owed by the United States to the person charged.

(6) DEPOSIT.—All penalties collected under this subsection shall be deposited in the Treasury of the United States as miscellaneous receipts.

(b) CRIMINAL.—A person is guilty of an offense if he willfully violates a provision of this Act or an order or regulation issued under this Act. Upon conviction, such

person shall be subject, for each offense, to imprisonment for a term not to exceed 5 years or a fine determined in accordance with title 18, United States Code, or both.

SEC. 11. SPECIFIC RELIEF.

(a) IN GENERAL.—The Attorney General, at the request of the Secretary, may bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of a provision of this Act or an order or regulation issued under this Act. Such district courts shall have jurisdiction to determine such actions and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

(b) IMMINENT HAZARD.—

(1) GENERAL RULE.—If the Secretary has reason to believe that an imminent hazard exists, the Secretary may petition an appropriate district court of the United States, or upon his request the Attorney General shall so petition, for an order suspending or restricting any transportation subject to regulation under this Act which is responsible for such imminent hazard or for such order as is necessary to eliminate or ameliorate such imminent hazard.

(2) EXISTENCE.—As used in this subsection, an imminent hazard exists if there is substantial likelihood that serious harm will occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risk of such harm.

SEC. 12. RELATIONSHIP TO OTHER LAWS.

(a) PREEMPTION AS GENERAL RULE.—Except as provided in subsection (b), any requirement of a State or political subdivision thereof which is inconsistent with any requirement of this Act or any regulation issued under this Act is preempted.

(b) EXCEPTION.—A requirement of a State or political subdivision thereof which is not consistent with any requirement of this Act or any regulation issued under this Act is not preempted if, upon the application of an appropriate State agency, the Secretary determines in accordance with procedures to be prescribed by regulation, that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirement of this Act or the regulations issued under this Act, and (2) does not unreasonably burden commerce. Such requirement shall not be preempted to the extent specified in such determination by the Secretary for so long as such State or political subdivision thereof continues to administer and enforce effectively such requirement.

(c) LIMITATIONS ON THE FILING OF CERTAIN JUDICIAL ACTIONS.—No State or political subdivision of a State which applies for a preemption determination under subsection (b) may seek the same or substantially the same relief in any court until the Secretary has taken final action on the application or until 180 days after filing the application, whichever is earlier.

SEC. 13. COORDINATION PROCEDURES.

Not later than 1 year after the date of the enactment of this Act, the Secretary, after consultation with appropriate State officials, shall establish procedures to promote more effective coordination between the agencies of the United States and of the States with regulatory authority over motor carrier safety with respect to implementation and enforcement of this Act.

SEC. 14. DEFINITIONS.

As used in this Act—

(1) CARGO TANK.—The term "cargo tank" shall have such meaning as the Secretary shall define by regulation.

(2) COMMERCE.—The term "commerce" means—

(A) trade, traffic, or transportation in the United States which is between a place in a State and a place outside of such State (including a place outside of the United States) or is between 2 places in a State through another State or a place outside of the United States, or

(B) any trade, traffic, or transportation in any State which is not described in subparagraph (A).

(3) INFECTIOUS WASTE.—The term "infectious waste" shall have such meaning as the Secretary shall define by regulation.

(4) FOOD.—The term "food" means (A) articles used for food or drink for humans, and (B) articles used for components of any such articles.

(5) MOTOR VEHICLE.—The term "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on highways; except that such term does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(6) NONFOOD PRODUCT.—The term "nonfood product" means any material, substance, or product which is not food.

(7) PERSON.—The term "person" means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, government, Indian tribe, or agency or instrumentality of any government or Indian tribe, but such term does not include, for the purposes of sections 10 and 11, any agency or instrumentality of the Federal Government.

(8) REFRIGERATED MOTOR VEHICLE.—The term "refrigerated motor vehicle" means any motor vehicle which is capable of being used to transport refrigerated products for human consumption.

(9) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

(10) SOLID WASTE.—The term "solid waste" has the meaning such term has under section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

(11) STATE.—The term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam.

(12) TRANSPORTS OR TRANSPORTATION.—The term "transports" or "transportation" means any movement of property in commerce by motor vehicles..

(13) UNITED STATES.—The term "United States" means all of the States.

SEC. 15. EFFECTIVE DATE.

(a) GENERAL RULE.—Except as otherwise provided, this Act shall take effect on the date of its enactment.

(b) PROHIBITION.—Sections 3(a), 4(a), and 5 shall take effect on the 180th day following the date of the enactment of this Act; except that the Secretary may extend such effective date with respect to one or more of such sections but not beyond the 270th day following such date of enactment.

Amend the title so as to read:

A bill to prohibit the use of refrigerated motor vehicles for the transportation of solid waste, to prohibit the use of cargo tanks in providing motor vehicle transportation of food and nonfood products, and for other purposes.

BACKGROUND AND NEED

The Subcommittee on Investigations and Oversight investigated and held hearings on a trucking industry practice of hauling in the same truck food and harmful substances that pose unnecessary risks to American consumers.

On August 2, 1989, the Subcommittee heard testimony on the practice of backhauling municipal solid waste in the same trucks that carry food products. This practice is especially prevalent in the Midwest and Northeast. Refrigerated trucks and dry vans are used to haul food and consumer products from Midwest suppliers and then are loaded with baled trash at East Coast transfer stations for return hauls to landfills in Ohio, Illinois, Indiana, Kentucky, West Virginia and Virginia.

On October 5, 1989, the Subcommittee held a hearing on the practice of backhauling chemicals in tank trucks that had previously hauled edible liquids. Truck drivers that had formerly engaged in crosshauling food and chemicals for a trucking company in Yakima, Washington, testified under oath about the details of this practice and described how they were required to do this on a regular basis.

While not all carriers engage in backhauling food products after hauling potentially harmful substances, the Committee has found that the practice is common enough to warrant serious concern and legislative action. Although most tankers and some tractor-trailers wash out between loads, and carriers maintain that proper cleaning procedures are sufficient to prevent contamination, state

and federal food inspectors and food scientists strongly disagree and believe this practice should be abolished.

GARBAGE BACKHAULING

With the increased competitiveness of the trucking industry, operators of vans and refrigerated trucks typically have found it difficult to match return shipments of cargo to the West with the constancy of Midwest foodhauls to the populous East Coast. This gap between hauls of food products from West to East and less frequent demands for products back has been filled in many instances with household trash. As one witness told the Subcommittee, ". . . any load is better than driving back empty . . ."

Generated at the rate of over three pounds per person per day, solid waste has already filled to capacity, many Northeastern landfills. New territory for disposal sites has been located in the central and southern states. The Environmental Protection Agency informed the Committee that there are currently 6,000 landfills, and that number will decrease to 3,000 in the next five years.

Municipal solid waste is collected by licensed companies and brought to county-operated trash transfer stations where it is baled or compacted for landfill disposal. Some counties have contracts with dedicated truck lines which haul only garbage to a designated landfill, usually nearby. Increasingly however, as East Coast landfills reach capacity transfer stations have looked to transportation brokers to provide long-haul trucks to transport the garbage to more remote landfills.

Transportation brokers are also involved in this aspect of transportation. Operating on a daily basis rather than on long-term contracts, the broker arranges for a refrigerated truck, dry van, flatbed or open-top truck to go to a transfer station, receive a load of household waste and haul it to a designated landfill. Some brokers refuse to hire refrigerated trucks, and some landfills refuse to accept waste hauled in a refrigerated truck. These are recent developments, however, and refrigerated trucks have been used regularly in the past to haul garbage.

DRY VANS

The problem of dry vans hauling municipal solid waste alternately with food products is less complicated than that of refrigerated trucks because in dry vans unprocessed food can come in no direct contact with potential contaminants.

In dry vans, the food item is usually packaged in cans, boxes, cartons and/or plastic within the trailer, and the trailer itself may be protected by a plastic liner.

Unlike refrigerated trucks which carry unprocessed food, there is no available evidence that hauling solid waste in dry vans could pose a problem to packaged, processed food products.

TESTIMONY FROM INDUSTRY AND GOVERNMENT OFFICIALS

Testifying at the August hearing was the association representing owner-operators, the American Trucking Association (ATA) and the Interstate Truckload Carrier's Conference (ITCC). The owner-operators were in favor of prohibiting refrigerated trucks and dry

vans from hauling garbage. ITCC was in favor of a prohibition on refrigerated trucks but was concerned about a comprehensive prohibition on backhauling garbage, because it thought food prices would increase dramatically, as would congestion on the highway. ATA favored more stringent cleaning and packaging standards and inspections.

The ITCC and ATA discussed the growing economic pressure to get a backhaul filled. Terry Turner of ITCC estimated that on an annual basis, 15 percent of the trucks hauling from the Midwest to the East return empty. That equates to about 2,000 trucks per week. This extreme competition for a return haul has led to the current problem of backhauling garbage in food trucks.

Representatives of the following five federal agencies also testified at the hearing: the Interstate Commerce Commission (ICC), the Environmental Protection Agency (EPA), the Department of Transportation (DOT), the Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA).

The Interstate Commerce Commission led an interagency inquiry into the backhauling problem, while USDA acted as lead agency in coordinating the federal response to the issue.

They conducted a factual inquiry and confirmed that garbage is being hauled in dry vans and refrigerated trucks. Their team visited a landfill and observed and photographed their operations.

They also visited a nearby truck wash and observed the standard procedure for cleaning a trailer after a garbage haul, which is done by using high-pressure hot water not exceeding 100 degrees Fahrenheit. No detergent or cleaning agent was used, and the vehicle still smelled strongly of garbage odors.

The ICC, however, does not have regulatory jurisdiction over the transportation of waste products, which are not considered "property" or of fresh fruits and vegetables, which are exempt.

The Environmental Protection Agency serves in an advisory capacity to states and local governments, which regulate municipal solid waste, and to DOT which regulates the transportation of hazardous materials and waste. They define what constitutes hazardous waste and Department of Transportation has a state enforcement program called the Motor Carrier Safety Assistance Program (MCSAP), with nationwide motor vehicle carrier safety highway inspections.

The United States Department of Agriculture has authority over meat and poultry products and inspects about 7,000 plants nationwide, on a daily basis. They also inspect trucks, by means of sight, smell and feel. Trucks are required to be sanitary, and no incidence of meat or poultry adulteration stemming from backhauling has been reported. The Environmental Protection Agency, USDA and FDA have all taken steps to inform inspectors, regional offices and trucking and food companies about the backhauling practice.

The Food and Drug Administration has authority through the Food, Drug and Cosmetic Act over the conditions in which food is handled. Section 402 of that Act, states that:

> A food shall be deemed to be adulterated if it has been prepared, packed, or held under unsanitary conditions

> whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

While this provision seems clearly to pertain to the risks associated with backhauling, it is not clear why FDA has not used this authority to regulate or prohibit the practice.

BACKHAULING FOOD AND CHEMICALS IN TANKER TRUCKS

The practice of hauling food products and non-food products consecutively is apparently an accepted cargo tank industry practice. The two largest carriers rarely haul food after non-food products, however, because they can afford dedicated lines.

Most tank truck operators find it necessary in a highly competitive market to backhaul food and non-food materials. The Subcommittee has learned about tank truck carriers in Washington, California, Texas and New Jersey that regularly backhaul food and non-food products nationwide.

Several truck drivers who were regularly dispatched by their company, in Yakima, Washington, to haul chemicals and edible liquids testified before the Subcommittee about the practice. They hauled plastic chemical resins, formaldehyde, marine oil, acetone, sodium sulfide, asphalt emulsion and other industrial chemicals consecutively with hauls of cranberry, apple, grapefruit and orange juices, whiskey, wine and edible oils. It was their belief that this was a common practice within the tank truck industry.

The drivers testified that they were instructed to sign certificates of cleanliness that misrepresented prior cargo loads. Certificates of cleanliness are provided to the food shipper upon request to show that the truck has been cleaned and to disclose prior shipments. In cases where chemicals were previously hauled, the carrier would require the driver to sign a form that erroneously listed a food grade product.

At the Subcommittee hearings, a witness said that if a tank truck had carried a chemical and was going to be next used for a food product, the washout ticket would falsely state the previous load as being food grade.

The Subcommittee was later informed that a New Jersey tank truck company, instructed its drivers to certify that they had carried "fructose," a food grade product, when in actuality, they had hauled an industrial chemical.

INDUSTRY REACTION

At the Subcommittee hearing, the tank truck industry was represented by Clifford Harvison, President of the National Tank Truck Carrier Association and Robert Shertz, Chairman of the Board of Chemical Lehman Tank Lines. Mr. Harvison sought to differentiate between the types of chemicals hauled in tanks which also carry food grade products.

Mr. Harvison said,

> The chemicals transported are always related to human consumption or personal care. For instance, the chemical may be a food additive, transported in concentrated form. It may be a product used in the preparation of cosmetics

or in prescription or over-the-counter medication. The product may be dish washing liquid or a commodity used in its formulation.

The majority of carriers contacted by the Subcommittee stated their belief that the tank washout is adequate enough to prevent contamination.

However, when asked about the adequacy of washouts, at the hearings, Mr. Shertz of Chemical Lehman stated that a proper washout is expensive and you would not want to do it from one load to another. Mr. Shertz believed it was possible, however, to make a long-term change to a new dedicated function by replacing the gaskets and pumps after thoroughly cleaning the tank. That sentiment was also shared by the president of Matlack in conversation with Subcommittee staff. Matlack and Chemical Lehman are the two largest tank truck carriers and operate tank washouts throughout the country.

The drivers also expressed doubts about the adequacy of the washout. They described some washouts being run by workers who were frequently careless and hurried. Many times a chemical odor would remain and they were instructed to use a deodorizer, not approved for use around food, to mask the smell.

SHIPPERS RESPONSE

Individuals representing shippers and related associations, called for the establishment of Federal standards and guidelines to identify food grade and non-food grade materials and vehicles.

Apparently, it is very difficult for shippers and receivers to test products to determine chemical adulteration. Unless the specific product being tested is known, it would be impossible for food shippers to determine chemical adulteration. This is even more difficult when shippers are given false information in regard to the previous load.

The shippers state that they would never knowingly use a tank truck that had hauled non-food grade chemicals. Some carriers, however, suggest that the rates the shippers are willing to pay may belie their professions of shock at this practice.

Evidence presented during the Subcommittee hearings demonstrated the necessity to hold the shipper and the receiver responsible for the transportation of its products, along with the carriers.

TESTIMONY OF FOOD INSPECTORS

Representatives from the State of Washington Department of Agriculture, who investigated and confirmed the allegations made by the truck drivers for a Washington company plainly supported enactment of federal legislation to ensure dedicated tank lines for food grade and non-food grade products.

Those investigators stated that they believe the practice is currently illegal under the Food, Drug and Cosmetic Act. However, as one state inspector pointed out, tremendous shortages in FDA personnel make it impossible to enforce.

ASBESTOS AND INFECTIOUS WASTE

The Subcommittee on Investigations and Oversight also investigated allegations that trucks that carry food and other consumer items are being used to backhaul asbestos and infectious waste.

Following the Subcommittee's hearing on garbage backhauling, a representative from an asbestos removal transportation company alleged that asbestos and infectious waste was being backhauled in trucks which carry consumer items.

The individual stated that he knew of specific incidents in which a refrigerated truck transported lettuce, and a dry van had picked up children's toys after hauling asbestos.

Because asbestos and infectious waste are disposed of at designated landfills, it would seem that the same forces driving garbage backhauling are behind this type of backhauling. Because of the lack of landfill space in the New York/New Jersey, area, it is necessary to transport the removed asbestos a great distance and, as a result, it is far less expensive to have a carrier backhaul on a return trip.

It would appear this type of backhauling is the most threatening. Asbestos fibers are nearly invisible, odorless, can stay airborne for days, and a person may not know he has been exposed for 20 years. For this reason, a case is made for the use of dedicated vehicles.

SUMMARY OF MAJOR PROVISIONS

The Committee reviewed the major problems that were pinpointed in the hearings held by the Subcommittee on Investigations and Oversight. The Committee then proceeded to adopt legislation that would help to abolish those practices which present clear safety problems and instructed the Department of Transportation to study other aspects of food transportation and to take any additional actions that are found to be needed.

The legislation makes it unlawful to use a refrigerated truck to transport food if the truck has been used to transport solid waste. The Secretary must publish a list enumerating certain types of solid waste that may be transported in these vehicles if the transportation of such waste does not make food unsafe.

Discussions with food and beverage industry representatives brought to light current practices of transporting cardboard boxes, empty cans and bottles, and other food packaging materials in refrigerated trucks returning from delivery sites. The Committee specifies in the legislation that cardboard and food packaging are to be included in the list of solid waste items which may be hauled in refrigerated trucks so long as the Secretary of Transportation determines they pose no risk to food safety. This includes cans and bottles that have been crushed or broken for ease of transportation. However, it is the Committee's intent to allow the Secretary to impose reasonable conditions on the transportation of these materials, such as additional packaging for broken glass bottles, where necessary to protect food.

In addition, the Committee does not intend the prohibitions of this legislation to extend to the transportation of materials which are clearly not solid waste, such as pallets, truck cleaning products, out-of-date foods, dented cans, or other distressed food products.

The legislation also makes it unlawful to use a cargo tank to transport food items if the tank is used to transport nonfood materials. Again, the Secretary must designate a list of nonfood items that may be transported in food tanks. Such items may not pose a safety threat to food.

Another aspect of the legislation requires that asbestos and infectious waste be moved in dedicated vehicles. The Secretary may permit other products to be transported in these vehicles provided it is appropriate.

It is important to note that the provisions of the legislation apply to carriers, shippers, receivers, and brokers. Therefore, it generally covers any persons who use motor vehicles in violation of the bills prescriptions. Here, it should be pointed out that the Committee also is aware of concerns raised by shippers that parties cannot know with absolute certainty what materials have been transported in the history of any given vehicle. It is expected that all entities included within the scope of the legislation will adopt the operational practices that are necessary to certify that vehicles transporting food are in compliance with the legislation. However, the Committee specifies that civil and criminal penalties apply only in cases of knowing or willful violation of the law or related regulations

The Secretary of Transportation is mandated by the legislation to issue regulations dealing with the marking of cargo tanks, the cleaning of cargo tanks, the cleaning of other vehicles where appropriate, and disclosure of products transported. These regulations should provide the carriers, shippers, and receivers with information that will assist them in complying with the provisions of the bill and generally should facilitate achievement of the goals of the legislation. The Secretary should issue disclosure requirements that assist the carriers, the shippers and receivers in determining the proper use for the vehicle.

Section 8 of the bill contains a provision which gives the Secretary authority to move forward with other initiatives. Pursuant to that section, the Secretary is directed to study and to implement other measures that may be needed to assure the safe transportation of food by trucks. The purpose of the study and future regulatory efforts implemented pursuant thereto is to examine and to eliminate practices that pose a risk to the safe transportation of food. The Secretary need not pursue activities where there is no reason to suspect the existence of food safety problems.

In doing the study, the Committee specifically directs the Secretary to examine existing regulations governing package performance standards; and where those standards are adequate to ensure that safe transportation of food, the Committee intends that no new regulations issued pursuant to section 8 should apply.

The Committee will examine closely implementation of section 8 to ensure that new regulations issued under the authority conferred upon the Secretary are needed to achieve the safe transportation of food.

Finally, the Secretary is given authority to impose civil penalties on violators and to pursue equitable relief to redress violations of the legislation.

SECTION-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that the Act may be cited as the Safe Transportation of Food Act of 1989.

Section 2. Findings

Section 2 sets forth the findings.

The finding are:

(1) Americans are entitled to receive food and other consumer products that are not made unsafe as a result of certain transportation practices;

(2) the American public is threatened by the backhauling of products potentially harmful to consumers in motor vehicles and cargo tanks which are used to transport food and other consumer products; and

(3) the risks posed to consumers by such backhauling practices are unnecessary, and such practices must be terminated.

Section 3. Refrigerated vehicles

Section 3 relates to the transportation of food in refrigerated motor vehicles.

Subsection 3(a) provides that no person shall use or arrange for the use of a refrigerated motor vehicle to provide transportation for food if such vehicle was used to transport solid waste.

Subsection 3(b)(1) provides that the Secretary shall establish a list of solid waste items that may be transported in refrigerated motor vehicles. The solid waste items may not pose any safety threat to food.

Subsection 3(b)(2) provides that the list provided for in subsection 3(b)(1) shall include cardboard and food packaging except to the extent that the Secretary determines that transportation of such items would make food unsafe.

Subsection 3(b)(3) provides that the Secretary may amend the list, periodically.

Section 4. Cargo tanks

Subsection 4(a) provides that no person shall use or arrange for the use of a cargo tank to provide motor vehicle transportation of food if such tank is used to transport a nonfood product.

Subsection 4(b) provides that the Secretary shall publish a list of nonfood items that may be moved in such tanks.

Subsection 4(c) provides that no person may use or arrange for the use of a cargo tank to provide transportation unless such tank is marked (1) for the transportation of nonfood products or (2) for the transportation of food products and nonfood products as listed by the Secretary. It prohibits the use of cargo tanks for transporting food products in tanks identified as nonfood tanks, and from transporting nonfood products in a tank marked as a food tank. It also provides that no person may receive any food or nonfood product in a tank that has not been marked appropriately for food or nonfood products.

Section 5. Transportation of asbestos and infectious waste

Section 5 requires that absestos or infectious wastes may only be transported in vehicles dedicated to the transportation of those respective items. The Secretary may list other commodities that are appropriate to be transported in vehicles dedicated to asbestos and infectious waste.

Section 6. Waiver authority

Section 6 confers general waiver authority upon the Secretary. Pursuant to that authority, the Secretary may waive any provision of the Act or any regulation issued pursuant to the Act with respect to any class of persons, class of motor vehicles, or classes of food. The standard is public interest.

Section 7. Regulations

Section 7 specifically directs the Secretary to issue regulations for implementation of sections 3, 4, 5, and 6 within 150 days of enactment. The Secretary must issue regulations setting forth requirements for vehicle markings for cargo tanks, cleaning of tanks and where appropriate other vehicles, and disclosure of products transported. The Secretary may issue regulations with respect to recordkeeping, waivers, monitoring of compliance, and marking for vehicles other than cargo tanks.

Section 8. Additional measures

Subsection 8(a) provides that the Secretary shall conduct a study to determine whether additional measures are necessary to assure that food transported in refrigerated motor vehicles and cargo tanks is not made unsafe. In addition, the Secretary shall determine for the same reason what measures may be necessary with respect to the transportation of food or other consumer products, or of solid waste and other products, or both.

In the study, the Secretary must consider the effectiveness of any regulations governing package performance standards.

The report shall be submitted to the Congress within 180 days.

Subsection (b) allows the Secretary to issue regulations based upon the study. Where the Secretary finds that existing package regulations are adequate to ensure the safe transportation of food, the Secretary would not apply any new regulations to that transportation.

Any new regulations issued would be sent to the Congress and such regulations cannot become effective until 90 days after such transmittal takes place.

Section 9. Powers and duties of Secretary

Section 9 provides the Secretary with certain powers and duties. Those powers track most of the authority contained in section 109 of the Hazardous Materials Transportation Act.

Under this authority, the Secretary can conduct investigations, issue subpoenas, conduct hearings, require production of documents, and conduct research and development demonstrations, conduct training activities, and carry out inspections.

Section 10. Penalties

Subsection 10(a) provides for up to $10,000 in civil penalties for violations of the Act or of any regulation. The Secretary has discretion in setting the amount of the penalty.

Subsection 10(b) provides for criminal penalties for willful violations of the Act or regulations. The criminal penalty includes up to 5 years imprisonment and fines in accordance with Title 18 of the United States Code.

Section 11. Specific relief

Subsection 11(a) provides that the Secretary may request the Attorney General to bring actions for equitable relief to redress a violation of the Act or a regulation. Relief may include mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damage.

Subsection 11(b) provides the Secretary with the authority to petition an appropriate district court for an order which would suspend or restrict any activity subject to regulation if such activity constitutes an imminent hazard. In the alternative, the Secretary may ask the Attorney General, and if asked, the Attorney General must file the petition. An imminent hazard exists where there is a likelihood that serious harm will occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risk of such harm.

Section 12. Relationship to other laws

Subsection 12(a) preempts any state law that is inconsistent with any requirement of this Act or any regulation issued under this Act.

Subsection 12(b) provides that the Secretary may establish procedures for making determinations of whether or not inconsistent state laws may stay in effect. The state requirement must afford an equal or greater level of protection to the public and must not unreasonably burden commerce.

Subsection 12(c) provides that if a state files for a determination under subsection (b), then it must delay court action for 180 days or until the Secretary reaches a final determination.

Section 13. Coordination procedures

Section 13 requires the Secretary to consult with State officials and to establish coordination between State and Federal officials for enforcement and implementation of this Act.

Section 14. Definitions

As used in this Act—

(1) *Cargo tank.*—The term "cargo tank" shall have such meaning as the Secretary shall define by regulation.

(2) *Commerce.*—The term "commerce" means—

(A) trade, traffic, or transportation in the United States which is between a place in a State and a place outside of such State (including a place outside the United States) or is between 2 places in a State through another State or a place outside of the United States, or

(B) any trade traffic, or transportation in any State which is not described in subparagraph (A).

(3) *Infectious waste.*—The term "infectious waste" shall have such meaning as the Secretary shall define by regulation.

(4) *Food.*—The term "food" means (A) articles used for food or drink for humans, and (B) articles used for components of any such articles.

(5) *Motor vehicle.*—The term "motor vehicle" means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on highways; except that such term does not include a vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail.

(6) *Nonfood product.*—The term "nonfood product" means any material, substance, or product which is not food.

(7) *Person.*—The term "person" means an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, government, Indian tribe, or agency or instrumentality of any government or Indian tribe, but such term does not include, for the purposes of sections 10 and 11, any agency or instrumentality of the Federal Government.

(8) *Refrigerated motor vehicle.*—The term "refrigerated motor vehicle" means any motor vehicle which is capable of being used to transport refrigerated products for human consumption.

(9) *Secretary.*—The term "Secretary" means the Secretary of Transportation.

(10) *Solid waste.*—The term "solid waste" has the meaning such term has under section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

(11) *State.*—The term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and Guam.

(12) *Transports or transportation.*—The term "transports" or "transportation" means any movement of property in commerce by motor vehicles.

(13) *United States.*—The term "United States" means all of the States.

Section 15. Effective date

Section 15 provides that sections, 3(a), 4(a), and 5 of the Act shall take effect 180 days after the date of enactment. The Secretary may extend the effective date for up to 90 days.

COMMITTEE CONSIDERATION

On August 2, 1989, and October 5, 1989, the Subcommittee on Investigations and Oversight held hearings on the practice of backhauling municipal solid waste in the same trucks that carry food and the practice of backhauling chemicals in cargo tank trucks that had previously hauled edible liquids. On October 2, 1989, H.R. 3386, a bill to prohibit the use of refrigerated motor vehicles for the transportation of solid waste and to prohibit the use of cargo tanks in providing motor vehicle transportation of food and hazard-

ous materials, and for other purposes, was introduced. On November 17, 1989, the Committee by voice vote discharged the Subcommittee on Surface Transportation from further consideration of H.R. 3386, and by voice vote ordered H.R. 3386 to be reporteed with an amendment.

COMPLIANCE WITH CLAUSE 2(l) OF RULE XI

(1) Pursuant to clause 2(l)(3)(A) of Rule XI of the Rules of the House of Representatives, the Subcommittee on Investigations and Oversight held hearings on the subject matter on August 2, 1989 and October 5, 1989 which resulted in the reported bill. There were no separate hearings held by the Subcommittee on Surface Transportation.

(2) With respect to Clause 2(l)(3)(B) of Rule XI of the Rules of the House of Representatives, the bill, as reported, does not provide new budget authority or increased tax expenditures. Accordingly, a statement pursuant to section 308(a) of the Congressional Budget Act is not required.

(3) Pursuant to Clause 2(l)(3)(D) of Rule XI of the Rules of the House of Representatives, no report has been submitted by the Committee on Government Operations pertaining to this subject matter.

Under (2)(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee on Public Works and Transportation estimates that enactment of H.R. 3386, as amended, would have no significant inflationary impact on prices and costs in the operation of the national economy.

COST ESTIMATE

In compliance with Clause 7(a) of Rule XIII of the Rules of the House of Representatives, the following statement is made regarding the cost of this legislation. The cost is indicated in the cost estimate from the Congressional Budget Office.

In accordance with clause 2(l)(3)(C) of Rule XI of the Rules of the House of Representatives, the Committee has received a report prepared by the Congressional Budget Office under section 403 of the Congressional Budget Act. That report is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 30, 1989.

Hon. GLENN M. ANDERSON,
Chairman, Committee on Public Works and Transportation, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3386, the Safe Transportation of Food Act of 1989, as ordered reported by the House Committee on Public Works and Transportation, November 17, 1989. CBO expects enactment of this bill would result in additional costs to the federal government of about $0.5 million in fiscal year 1990 and $3 million to $5 million per year thereafter. We do not expect the bill to result in significant costs to state or local governments.

H.R. 3386 would prohibit: transportation of most solid waste in refrigerated vehicles used to transport food; and transportation of some nonfood products in cargo tanks used to transport food.

In both cases, the Secretary of Transportation would be required to publish lists of materials that could be shipped in these vehicles without violating the law. The bill would also require the Secretary to issue implementing regulations and to conduct a study to determine if other measures are necessary to ensure the safe transportation of food. We estimate that the department's cost to meet these requirements would be about $500,000 in fiscal year 1990. Further, we expect that the department would have to hire additional personnel to carry out its new ongoing responsibilities, mostly for enforcement of the regulations. We estimate that the cost to the federal government would be about $3 million to $5 million per year, H.R. 3386 would authorize no additional appropriations for this program.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marjorie Miller, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

VOTE

In compliance with Rule XI(2)(l)(B), at a meeting of the Committee on Public Works and Transportation on November 17, 1989, a quorum being present, H.R. 3386, as amended, was approved by a voice vote and ordered reported.

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